

Order

Michigan Supreme Court
Lansing, Michigan

December 7, 2007

Clifford W. Taylor,
Chief Justice

133351

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

EARL ANSPAUGH and TRINITY
OF MICHIGAN, L.L.C.,
Plaintiffs-Appellees,

v

SC: 133351
COA: 262492
Lapeer CC: 01-030637-CE

IMLAY TOWNSHIP, IMLAY TOWNSHIP
BOARD, and IMLAY TOWNSHIP
PLANNING COMMISSION,
Defendants-Appellants.

On order of the Court, the application for leave to appeal the December 5, 2006 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals, and we REMAND this case to the Lapeer Circuit Court for further hearing, if necessary, and further findings of fact. The Court of Appeals engaged in appellate fact finding when it concluded that “we too find that the I-2 zoning provided for by defendants is exclusionary,” because “there is no direct route of travel” to the property zoned for I-2 use, and consequently “the I-2 land use siting provided by the township is not appropriate to foster the commercial uses to which land designated for I-2 uses must be put.” 273 Mich App at 129-130. On remand, the Lapeer Circuit Court shall determine whether, as the Court of Appeals held, “the township’s zoning ordinance effectively excludes lawful and otherwise appropriate I-2 uses for which there is a demonstrated need,” owing to the unsuitability for I-2 uses of the available routes of access to the I-2 zoned property within the township. In making this determination, the Lapeer Circuit Court shall consider whether there are available indirect routes that provide reasonably suitable access to the I-2 zoned property.

We do not retain jurisdiction.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 7, 2007

Corbin R. Davis

Clerk